***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

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+ WRIT PETITION No.19003 of 1997

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%Dated 23.01.2007

C.Sreeramulu S/o Krishnappa,

R/o Gundlaburuju H/o Rachavetivaripalle,

Nimmanapalle, Chittoor District.

… Petitioner.

VERSUS

$ The Joint Collector, Chittoor District,

Chittoor, and others.

… Respondents.

! Counsel for Petitioner: Sri N.Pramod

^Counsel for Respondents: Government Pleader for Revenue

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? Cases referred

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

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WRIT PETITION No.19003 of 1997

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Dated: 23.01.2007

Between:

C.Sreeramulu S/o Krishnappa,

R/o Gundlaburuju H/o Rachavetivaripalle,

Nimmanapalle, Chittoor District.

..... PETITIONER

AND

The Joint Collector, Chittoor District,

Chittoor, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

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WRIT PETITION No.19003 of 1997

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ORDER:

This writ petition is filed seeking a mandamus declaring the proceedings dated 05.12.1994 issued by the third respondent and confirmed by respondents 1 and 2,

vide orders 16.05.1997 and 05.10.1995, respectively, as arbitrary and illegal, and consequently to set aside the same.

The case of the petitioner is that in the year 1947 the land bearing Sy.No.308 admeasuring Ac.3.23 cents of Rachavetivaripalli village, Nimmanapalle Mandal, was assigned to one Nakka Musalaiah and he, in turn, sold the said land to one Smt.Erramma in the year 1960. Subsequently, the father of the petitioner purchased the said land from the said Erramma in the year 1974 and was in possession and enjoyment of the same, and after his demise, the petitioner has been in peaceful possession and enjoyment of the same. Be that as it may, the third respondent, invoking the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act"), ordered resumption of the said land holding that the transfer of the said land is illegal. Against the said order, the petitioner preferred an appeal before the Revenue Divisional Officer-second respondent herein, and the second respondent, by his order dated 05.10.1995, dismissed the said appeal. Aggrieved thereby, the petitioner preferred a revision before the Joint Collector, Chittoor-first respondent herein, and the first respondent also dismissed the said appeal. Hence, this writ petition.

A counter affidavit is filed on behalf of the respondents stating that the assignment of the said land was meant only for the depressed class beneficiaries, and as such transfer of the said land in favour of the father of the petitioner, who belongs to Backward Class, is illegal. It is further stated that the petitioner is not a landless poor person and he owns Ac.5.00 of dry land in Sy.No.722/2 and wet land admeasuring Ac.0.93 cents, and that by suppressing the fact that the said land is a Government land, he has obtained pattadar pass book and therefore, he is not entitled for assignment.

Heard the learned counsel for the petitioner and the leaned Government Pleader for Assignment.

The rules regarding assignment of land and the conditions incorporated in 'D" form pattas prohibit alienation of such lands and provide for its resumption as well as regrant to eligible persons. However, past experience has shown that substantial extents of lands assigned to landless poor persons have been actually alienated and are in possession of well-to-do persons. As the existing rules do not have adequate provisions for punishment of persons who have purchased such lands, efforts made for assignment large extents of lands to landless poor persons are going waste. Hence, with a view to enforce the objective more effectively, it was considered by the legislature to have a protective legislation and as a sequel of that the Government of Andhra Pradesh promulgated the Act. Section 3 of the Act prohibits any transfer of assigned lands and sub-section (1) of Section 3 reads thus:

> "Where before or after the commencement of this Act any land has been assigned by the Government to a landless poro person for purchase of cultivation or as a house site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be

> deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer."

From the above provision, it is clear that the transfer of assigned land, whether it is made before the commencement of the Act or after the commencement of the Act, is bad and the Government has every right to order resumption. However, sub-section (5) of Section 3 is like an exception to Section 3 and it is as follows:

> "Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement."

From the above provision of law it is clear that if transfer of an assigned land made either before commencement or after commencement of the Act satisfies three requirements i.e, 1) if the transfer is in favour of the landless poor person; 2) for a valuable consideration; and 3) if the said transfer is *bona fide* and is made in good faith, it is a valid transfer.

In the instant case, transfer of the land from the original assignee, Musalaiah, in favour of Erramma took place in the year 1960. The third respondent while holding that transfer of the said land from Erramma in favour of the father of the petitioner is illegal, has not gone into the aspect as to whether the said Erramma is a landless poor person or the transfer in her favour was made in good faith. Similarly, the third respondent has not given a finding as to whether the subsequent transfer by Smt.Erramma in favour of the petitioner's father was done in good faith or not and whether the petitioner's father is a landless poor person. Even in the counter also there is nothing about the said aspects. On this ground alone this Court is of the view that the order passed by the third respondent is liable to be set aside, and the matter liable to be remanded for fresh consideration. However, the fact remains that land was transferred in favour of the petitioner's father as early as in the year 1974 and the petitioner's family has been in possession and enjoyment of the same since more than 30 years, and it is the case of the petitioner that he is a landless poor person. Hence, this Court is of the view that it may be a futile exercise to remand the matter again to the third respondent to hold an enquiry.

For the foregoing reasons, the writ petition is allowed setting aside the order, dated 05.12.1994, passed by the third respondent, and the orders dated 16.05.1997 and 05.10.1995, passed by respondents 1 and 2, respectively. There shall be no order as to costs.

23.01.2007

Note: L.R. copy to be marked.

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